

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 75 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ASHOK @ BADRU KISHANBHAI KAHAR

Versus

DEPUTY COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner
NOTICE SERVED for Respondent No. 1
PUBLIC PROSECUTOR for Respondent No. 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 27/03/98

ORAL JUDGEMENT

By this application, under Article 226 of the Constitution of India, the petitioner, who has been externed from the District of Baroda, City of Baroda and other neighbouring districts for a period of 1 year by the Deputy Police Commissioner, South Region, Baroda City, invoking his powers under Section 56 of the Bombay Police Act calls in question the legality and validity of

that externment order.

2. The petitioner was known to be a head-strong person because of his subversive and nefarious activities. He was causing alarm, danger and harm to persons or properties in order to carry out his anti-social activities disturbing the public order. He has also formed a gang and with the assistance of his compeers he was terrorizing the people and causing extensive damage to the properties. He was keeping knife, gupti, sword, pipe and his compeers used to terrify the people using those weapons. When the Police records were examined, it was found that about 7 complaints were lodged in Panigate Police Station. Three complaints were under the Prohibition Act and rest were relating to the offence punishable under Section 143,147,148,452,427,337,307,435, and 149 of Indian Penal Code and Section 135 of the Bombay Police Act. The petitioner and his compeers used to assault the persons, suspecting that they were giving information to the police, and beat those persons brutally. In short he was pausing danger to the society and immediate action for his removal from particular area was found necessary. The Dy.Commissioner of Police, B Division, Baroda city had passed the impugned order directing the petitioner to remove himself from the local limits of Baroda District and the neighbouring districts undergoing necessary formalities. That order has been approved by the State Government. Under that order the petitioner who is externed from the limits of the above stated area has therefore filed this petition challenging the legality and validity of the externment order.

3. The petitioner has challenged the order of externment on several grounds, but at the time of hearing before me, the learned advocates representing the parties tapered off their submissions, confining to the only point i.e. delay in passing the order. Mr.Patel, learned advocate representing the petitioner submitted that the Authority passing the order was well aware of the so-called activities of the petitioner right from October 1991, but grostesquely thought it fit to issue notice in the month of March 1997, and passed the order on 16.10.97. Ordinarily, in such cases, the order is required to be passed promptly. If that is not done and undue delay is caused, the same has to be explained, but in this case when the delay is not explained it is certainly fatal to the other side and externment order cannot be maintained. Mr.U.R.Bhatt, learned APP vehemently argued that in this case promptly the order was passed and on the ground of delay it would not be

just to set aside the order because delay cannot be ipso-facto held to be fatal for some cause or delay which is unavoidable and reasonable.

4. If there is a necessity to prevent violence and alarm of a particular person order has to be passed promptly. If without any just cause delay is caused, it would certainly be fatal to the externment order passed. Reading Sec.56 of the Bombay Police Act, it becomes clear that such preventive action should be taken immediately. Any unjust delay would definitely vitiate such action taken as a preventive measure for delay fatally hits the justness. The authority, if there is any delay, has to explain the same, but if the delay is not explained it should be assumed that without any just cause, the authority passed the order. The order in that case will have to be quashed.

5. In this case, it appears from the materials placed before me and especially the order in question produced at Exh.12, that the Authority passing the order was aware of the so-called anti-social activities of the petitioner right from October, 1991. Still however, prompt actions are not taken allowed the petitioner to do the wrongs, and in the month of March, 1997, suddenly the Authority thought it fit to issue notice and pass the order on 16.10.97 which seems to be eerie & unusual. The Authority passing the order has not filed the affidavit explaining the delay though according to him the activities of the petitioner were causing alarm and danger to the society. The abstinence of the authority is the circumstance on record going to show that in fact no action was required to be taken as nothing alarming was being done, but for some political reason as submitted, or for any other reason best known to the authority the order was passed. The delay in this case is therefore definitely fatal and vitiates the action taken as a preventive measure. The order of externment is therefore required to be quashed and set aside being illegal and unconstitutional.

6. For the aforesaid reasons, this application is allowed. The order of externment dated 16.10.97 is hereby quashed and set aside. It will be open to the petitioner now to enter into the local limits of above said areas. Rule accordingly made absolute. Direct Service permitted.

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